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After the Paris Agreement

New Challenges for the EU's Leadership in Climate Policy

Susanne Dröge and Oliver Geden

In December 2015, 195 countries adopted a new global climate agreement in Paris. It provides an expanded regulatory framework and specifies the goals of the UN Framework Convention on Climate Change (UNFCCC). A significant number of states including the U.S. are expected to ratify the Paris Agreement (PA) within the year. Industrialized nations have a strong obligation to keep up the momentum that was generated in Paris. If the European Union (EU) wants to maintain its leadership role, it should focus on two key tasks in 2016. First, it should speed up legislation to implement the climate and energy targets for 2030 adopted by the European Council, a political prerequisite for Member States' ratification of the PA. Second, it should expand and strengthen cooperation with the developing countries. For the immediate future, an increase in EU climate ambitions for 2030 or 2050 is not likely to become part of the political agenda.

The Paris Agreement differs fundamentally from the Kyoto Protocol, which still regulates global climate protection under international law up to 2020. Instead of relying on multilaterally negotiated provisions for emissions reductions, countries have now decided to develop their own national agendas. By establishing transparent rules and unified standards and ensuring a mutual exchange of information, they intend to lay the foundation for stronger climate policy cooperation.

National intentions rather than global requirements

At the 21st Conference of the Parties (COP21) in Paris, it was decided that future global

climate policy will be based on “nationally determined contributions” (NDCs; prior to the Paris Agreement preceded by “intended” and referred to as INDCs). NDCs may include not only mitigation targets but also information about adaptation needs. They can also specify political instruments or conditionality, based, for instance, on the provision of financial support. For the first time in UNFCCC history, this places all signatories in a position to participate in global climate policy based on their own national interests (see *SWP Research Paper 4/2016*).

Even before the start of the COP21 in Paris, 188 states had already submitted initial INDCs to the UNFCCC. Article 3 PA stipulates that the contracting parties will be under obligation to determine their

NDCs, to submit them on a regular basis, and not to fall below the level of their previous commitments (“progression”). The reduction targets contained in the NDCs are not part of the agreement and are thus not binding under international law. According to Article 4, states are expected to undertake national measures to implement the submitted NDCs. Rules for streamlining, for unifying processes and standards, and for promoting synchronization of timelines remain to be negotiated in detail.

Clear focus on protecting the climate

According to the Paris Agreement, emissions reduction efforts should focus on the goal of keeping global warming “well below” 2 degrees Celsius. The PA also mentions the 1.5 degree target that many island states had been pushing for but asks countries merely “to pursue efforts.” Furthermore, in the second half of the 21st century, remaining emissions should be balanced to achieve greenhouse gas neutrality. Since emissions from agriculture, land use, and some industrial processes cannot be avoided entirely, these will have to be compensated by using technologies that are able to remove CO₂, such as massive reforestation or the combination of bioenergy production with carbon capture and storage (BECCS).

The Paris Agreement requires that industrialized countries specify absolute emissions reduction targets in their future NDCs. Developing countries are to increase mitigation efforts, which can be set as relative targets or as pathways over time. They will receive financial, technical, and practical support. The PA contains no explicit provisions for emerging economies. What it requires of all countries is that net emissions be reduced to zero by 2100.

Adaptation to climate change

The Paris Agreement is the first major treaty under the UNFCCC to explicitly regulate how the consequences of climate change are to be dealt with. It formulates the global

adaptation targets in less concrete terms than the mitigation goals, however. Article 7 of the Paris Agreement contains a qualitative target: Overall capacities for adaptation to climate change should be increased so that vulnerability is reduced and resilience to climate change is strengthened. It also notes regional differences in the consequences of climate change and the diversity of actors involved as well as the need for financial aid and closer cooperation.

Perhaps most importantly, the Paris Agreement attributes the same importance to adaptation as it does to mitigation. This is the result of longstanding demands raised by the developing countries. The Cancun Adaptation Framework (CAF) created within the UNFCCC context in 2010 will be responsible for ensuring the flow of information and the implementation and communication of the adaptation agenda. The agreement also provides an explicit guarantee that the developing countries will receive support for their efforts.

Climate finance

The catalyst for increased participation in mitigation efforts and the achievement of adaptation targets is set out in Article 9, which deals with climate financing. This area, too, will be subject to a regular evaluation known as a “global stocktake”. The OECD countries are obligated to provide funding, while the developing countries can do so on a voluntary basis. Funds will only be disbursed, however, when the recipient countries can demonstrate that they are implementing their NDCs. So far, climate financing has not been provided in a reliable manner. The Green Climate Fund (GCF) has been created as the central UN institution for climate finance, but the inflow of funds from industrialized countries in the amount of 100 billion US dollars per year by 2020 is not yet fully guaranteed. Also, the first GCF projects have only recently been approved. Further talks will take place under the PA up to 2025 about increasing financial support from the industrialized

countries, and exceeding the currently pledged 100 billion US dollars.

The new climate regime thus demands leadership by the industrialized countries here as well: They are called upon to push global climate policy forward by providing support to developing countries in all areas. Donor countries, on the other hand, will be allowed to provide this support conditional on the transparency and measurability of the developing countries' activities.

Entry into force and further development

The implementation of the Paris Agreement will be accompanied by the annual Conference of the Parties serving as the Meeting of the Parties to the Paris Agreement (CMA), which will be held together with the regular COPs of the UNFCCC. The CMA will be able to commence work as soon as the agreement has entered into force. For this to happen, it will have to be ratified by at least 55 states that are responsible for a total percentage of at least 55 percent of global emissions. The first overall examination of mitigation efforts under the Paris Agreement ("facilitative dialogue") is planned for 2018. This process is intended to invigorate the next round of NDCs that must be submitted under the provisions of the agreement on a regular basis. Countries are under no obligation, however, to increase their existing INDCs following the facilitative dialogue. After the agreement enters into force, global stocktakes are scheduled to take place on a five-year cycle. The first comprehensive evaluation of mitigation and climate finance will take place in 2023 (Global Stocktake, Article 14 PA).

Legislative procedures in the EU

For the EU, the climate negotiations in Paris were a diplomatic success. Although the EU can still be considered a global leader in climate policy, the Paris Agreement is also creating pressure for European leaders to take more decisive action.

Up to now, the EU climate target of reducing emissions by at least 40 percent by 2030 (compared to 1990 levels) adopted by the 28 heads of state and government in October 2014 has only been a statement of intention. In order to prevent the substantial differences between EU Member States from becoming an explosive issue in the run-up to COP21, the EU Commission came to an agreement with Member States to deliberately refrain from early introduction of particularly controversial legislative procedures (see *SWP Comments 55/2014*). The amendment of the emissions trading directive that will regulate the power sector and energy-intensive industry had already been largely pre-structured by the European Council and is currently under discussion in the committees of the European Parliament. The creation of new national emissions reduction targets for those sectors that are not covered by the emissions trading system (transport, heating, services) has been postponed. As soon as the Commission publishes its proposal on this issue (*Effort Sharing Decision*, expected before the summer break in 2016), deep-seated and in part also ideologically driven conflicts between Member States are highly likely. Poland's new government will almost certainly stand at the center of these disputes.

To fulfill its international obligations, the EU will for the first time have to define a legal instrument to calculate land use, land-use change, and forestry (LULUCF) as part of the EU's overall emissions reduction target. This could facilitate negotiations within Europe, but it also entails the risk of diluting the EU climate target. In addition, further potentially conflictual legislative procedures are likely to be opened in 2016. These include the amendment of the renewable energy directive as well as a mechanism designed to provide "European Energy Governance." Also expected in the coming year is an equally controversially proposal for a guideline to tighten the CO₂ emissions limit for passenger cars from 2021 on.

The challenge of maintaining EU leadership

After the euphoria of the Paris climate summit, the EU is now confronted with the realities of a long uphill battle to maintain its climate policy leadership. Its initial focus will be on the task of translating the previously agreed energy and climate headline targets into binding legislation. On the international level, this process will be followed very closely to see whether the EU is capable of working out climate policy compromises internally, all the more since this is seen as a prerequisite for the EU's ratification of the Paris Agreement.

The question of whether the EU will intensify mitigation efforts in light of the PA will be of little importance to the Juncker Commission, which remains in office through 2019. Much more prominent issues will include differences within the EU over refugee policy, a possible *Brexit*, and the still-smoldering Eurozone crisis. At present, the Commission is attempting to keep debate from even starting over strengthening the 40 percent target for 2030. It came as some surprise that the Commission's first position paper advocated only a modified climate roadmap for 2050 and suggested adopting new EU climate targets solely for the post-2030 period. Since the issue of a new 2030 emissions reduction target would cause the profound differences between the Member States to flare up again, it is unlikely that the European Council, which is responsible for setting EU climate objectives, will treat this question as a priority in the near future – especially since its decisions are by consensus.

While leaving the EU climate target for 2030 unchanged would not be in conflict with the text of the Paris Agreement, this would certainly contradict its spirit. International observers would see this as an indication that the EU is abdicating its leadership role. Moreover, it would be incompatible with the particular responsibility that industrialized countries took upon themselves in Paris for climate protection.

Because of its internal division, the EU and its 28 Member States are not likely to ratify the Paris Agreement soon. Since the requirements for its entry into force are not particularly high, they can be met without the EU. Yet this would be detrimental to the EU's credibility on climate policy – especially from the standpoint of countries that are partners to the “high ambition coalition” that helped make COP21 a success, and those that are most severely affected by climate change. In the likely case that the PA enters into force prior to EU ratification, the EU will not be allowed to participate in initial decision-making over the many rules and procedures needed for the implementation of the Paris Agreement. This will add to the overall challenge that faces the EU as it attempts to maintain its position as a leader in global climate policy. Although the UNFCCC secretariat is already considering the option of suspending the first formal CMA session if it would otherwise have to be convened with a minimal number of Parties, this would nevertheless highlight the EU's growing difficulties in reaching internal consensus. This not only affects the PA and the EU's legislation on implementing its 2030 headline targets but also plays a role in the still pending EU ratification of the Doha Amendment to the Kyoto Protocol, which is intended to establish Kyoto's second commitment period (2013–2020).

Currently, Europeans can only meet the expectations resulting from the Paris Agreement in two key ways: by increasing financing commitments and by working to create and expand cooperation projects with developing countries. In the context of the current refugee crisis, it will be easier to mobilize support to countries where climate change impacts could exacerbate supply risks and threaten to increase instability. For EU climate diplomacy, the challenge will be to convince important partner countries during ongoing UNFCCC negotiations that EU climate policy remains a reliable model for others – despite the differences that exist within the Union.

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